IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 775 OF 2002

M/s Foundation Corporation of India ... Petitioner

V/s

Shri Nelson D'Souza & 61 others

63. Smt. S.V. Ayerekar ... Respondents

Mr.V.P.Vaidya for petitioner
Mr. B.C. Shah for respondents

Coram : (Dr.)D.Y.Chandrachud,J.

Dated : 18th March, 2005.

P.C :-

1 This Petition is directed against an order of the Industrial Court dated 5th November 2001 in a complaint of unfair labour practice under item 6 of Schedule II and item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 (“Act”).

2 The petitioner is a company incorporated under the Companies' Act 1956. A partnership was initially established in the year 1963. The company was incorporated in the year 1970.The principal business of the company was the construction of pile foundations. Between 1978 and 1984 the Bharatiya Kamgar Sena was representing the workmen

engaged by the management. In 1985, the permanent workmen were stated to have resigned from the membership of the Bharatiya Kamgar Sena and joined the United Labour Union. According to the management, in the year 1986 there were about 126 employees of whom 82 workmen were permanent and 44 workmen were temporary. On 11th September 1985, a settlement was arrived at with the Bhartiya Kamgar Sena for a term of 3 years, in relation to the conditions of service of temporary workmen. On 25th March, 1986 settlement was entered into with the United Labour Union to govern service conditions of permanent workmen.

3 Briefly stated the grievance of the complainant union is that with effect from 2nd May,1986 the Bharatiya Kamgar Sena representing the temporary workmen sponsored a strike which neither concerned the complainant nor its members. It is alleged that taking advantage of the strike the management refused to pay arrears that were agreed upon in the settlement dated 25th March,1986 with the complainant-union. Clause-34 of settlement provided for the payment of arrears from 1st June,1985 till 31th March,1986. The payment of arrears was required to be made in two instalments, 50% on or before 31st March,1986 and 50% on or before 15th August,1986 respectively. The grievance of the complainant-union was that the workmen were being prevented from reporting for work by the temporary workmen who belonged to a rival union. The management issued a

notice on 3rd May 1986 stating that work had completely stopped and, therefore, no payment would be made to any worker. The allegation in the complaint was that the permanent workmen had served in the company for more than 20 years and the management was attempting to create a false ground of lock- out so as to displace them and appoint temporary workers. In the circumstances, the relief which was sought by the Union was to direct the management to pay the arrears to permanent workers under the settlement for the period from May to June 1986 and an injunction restraining the management from declaring a lock- out, and from discharging the permanent workmen from service in any manner whatsoever.

4 The management filed a reply to the complaint. According to the management, piling work was not required to be done on a day to day basis at the work sites of the company but at sites nominated by the clients of the company.Before the work commenced, the workers would have to go to the site and thereafter carry out the work as assigned. The management denied that the workmen were entitled to relief. Evidence was adduced before the Industrial Court which culminated in the impugned judgment and order dated 5th November,2001.The Industrial Court has held that the management had engaged in an unfair labour practice under item 9 of Schedule-IV and directed the management to pay (i) the amount due under Clause 34 of the

Settlement dated 25th March,1986; and (ii)lay off compensation under section 25C of the Industrial Disputes Act 1947.

5 The complaint was originally filed before the Industrial Court by the United Labour Union. During the pendency of the complaint the Union ceased to take an active interest in expousing the cause of the workmen .An application for amendment was moved before the Industrial Court for bringing on record sixty two individual workmen and accordingly, they were brought on record. It is common ground that twelve workmen have expired during the pendency of the proceedings before the Industrial Court. During the pendency of this petition,an interim order was passed on 18th March,2002 directing the management to deposit the arrears which arose out of the settlement dated 25th March,1986 and liberty was granted to the workmen and in case of the deceased workmen,to their legal heirs to withdraw the respective amounts due subject to identification by advocate appearing on behalf of the workmen. Counsel appearing on behalf of the management also stated before the court that claims of gratuity of the deceased employees and other employees would be settled. Subsequently on 17th December, 2002 a further direction was issued interalia for identification of the heirs of the workmen. It appears that only 22 out of 62 workmen had collected the arrears.

6 The principal challenge in this proceeding is to the order of the Industrial Court in so far as it directed the management to make payment of lay off compensation. A perusal of the complaint would show that no issue of lay off compensation was raised by the union. According to the union, the management was in the process of declaring an unlawful lock out which was sought to be prevented by seeking appropriate directions of the court. It was submitted on behalf of the management that payment of lay off compensation was not an issue in the proceeding before the Industrial Court. Moreover, it was urged before the court that the management had moved the Labour Court for a declaration that the strike which had been resorted to was illegal under section 25 of the MRTU and PULP 1971 . In fact,a declaration of illegality came to be issued on 30th April,1986. It was urged that the Industrial Court in collateral proceedings could not have ruled on the legality of the strike which had already been concluded in the earlier order of the Industrial Court under section 25 of the MRTU and PULP Act,1971.

7 In considering the submissions, it must at the outset be noted that the management had moved the Labour Court in a proceeding under section 25 of the MRTU & PULP Act,1971 for a declaration that the strike was illegal. The Labour Court passed two orders therein. The first was

an order dated 22nd April,1993 by which a declaration came to be issued. However, no declaration of illegality was made in respect of any specific employees. The order of the Labour Court dated 22nd April,1993 shows that the United Labour Union was served with the proceedings and had filed a written statement. Both the unions were parties. Bharatiya Kamgar Sena and United Labour Union subsequently abstained from the proceeding and an exparte order was passed on 22nd April,1993.Later on, the management moved a review application and in that application a further order dated 30th April, 1996(exhibit B to the petition) was passed by the Labour Court by which a declaration came to be issued in respect of employees listed in annexures A and B thereto. The order passed on the review application specifically recorded that notice of that proceeding was published in the newspapers on 9th September,1995 and an affidavit was filed to the effect that the opponents had been served. Now, it is common ground that no steps have been taken by either of the Unions who were parties to the aforesaid proceedings or by any of the complainant workmen to challenge these orders.In my view,there is merit in the submission which has been advanced on behalf of the Petitioner to the effect that so long as an order of a duly constituted judicial authority under Section 25 of the MRTU & PULP Act,1976,held the field it was impermissible for the Labour Court in a subsequent complaint arising out of item-6 of Schedule -II and item 9 of Schedule-IV to sit

as an appellate forum and to decide upon the correctness of the previous order.Under item 6 of Schedule-II an unfair labour practice lies in proposing or continuing a lock-out deemed to be illegal under the Act. Under item 9 of schedule-IV an unfair labour practice lies in the failure to implement an award, settlement or agreement. In so far as the complaint under item 6 of Schedule-IV is concerned the order passed by the Labour Court holding and declaring that there was an illegal strike would provide a clear answer to the allegation of an unfair labour practice by the employer. Once it had been held that it was the workmen who had resorted to an illegal strike, no such declaration under item 6 of Schedule IV could have been issued unless steps were taken in accordance with law to have the declaration of an illegal strike corrected or set aside. No such steps were taken. A perusal of the impugned order would show that the Industrial Court has exercised jurisdiction akin to that of a reviewing court over a decision of the Labour Court in independent proceedings.The Industrial Court held that in the earlier proceeding the Labour Court proceeded exparte, that the management had not produced the names of the workmen listed in annexures-A and B and that there was no evidence to show that a declaration had been issued against the workmen. The Industrial Court has in my view clearly transgressed the limits on its own jurisdiction. If the workmen were aggrieved by the order of the Labour Court, it was open

to them to adopt appropriate proceedings. The Industrial Court ought not to have gone into the correctness of the earlier order passed by the Labour Court in proceedings under section 25 of the MRTU & PULP Act, 1971.

8 Besides this, counsel appearing for the petitioners submits that in the complaint before the Industrial Court the question of lay off compensation was never in issue. The complaint dealt with the apprehension of the workmen that the management was going to declare an illegal lock out and that 62 permanent workmen were being prevented from working by the striking temporary workers who owed allegiance to the Bhartiya Kamgar Sena. There is merit in submission urged by counsel appearing for the management . There were no pleadings in regard to the question of lay off compensation. The directions issued by the Industrial Court are clearly unsustainable and the order directing the payment of lay off compensation is set aside.

9 From the material on the record it is clear that the company has long since ceased to carry on any business. Counsel appearing on behalf of the Respondents does not dispute this. But, according to him, the company carried on some remaining business outside Mumbai in the year 1989.The grievance urged on behalf of the workmen is that though the management had stated before the Industrial Court that it was ready and willing to pay the terminal dues of the workmen as far back as on 13th

November,1986 no such payment has been made to the workmen. It appears that

on 13th November, 1986 an application was prepared and signed on behalf of the management. It was stated therein that the workmen may be offered their legal dues in full and final settlement if the operations of the company have to be closed. It was stated therein that the management was however unable to pay the entire amount at once and, therefore, the legal dues of the workmen would be paid in twenty quarterly installments . The management proposed that the entire amount would be deposited between 31st March,1987 and 31st December,1991.An application was filed by the Union before the Industrial Court for a direction to the management to comply with its assurance. In reply, the management stated that the temporary workmen had not reported for work and had continued their strike. In view of the continuation of the strike, the company claimed that it had laid off the permanent workmen. Since the workmen were laid off in response to a strike, the company urged that it was not liable to pay lay off compensation. However, the company stated that it had leased out its machineries and that while it was not in a position to deposit the entire amount of the dues of the workmen forthwith they would be paid progressively. The documentary record demonstrates that despite the assurance given by the management, the dues of the workman have not been paid even by installments. The management has failed and

neglected to do so.The chart which is annexed to the application dated
30th April,1986 would show that 50 out of 61 workmen have put in over twenty years service.The workmen cannot not be deprived of their terrminal benefits. The management has not taken any steps to disburse the dues of the workmen.

10 In the circumstances, in the interests of justice it would be necessary to direct the management to compute and pay the terminal dues of the workmen on the basis of the closure of the establishment as on 1st May,1986. Ordered accordingly. The workmen would be entitled to simple interest on the outstanding dues at the rate of 9 per cent per annum from 1st May,1986 until payment is effected. The management shall deposit the outstandings together with interest within a period of 3 months from today before the Industrial Court. This shall be in addition to the amount of gratuity which is due and payable to the workmen. The Industrial Court shall take steps in pursuance of this order to disburse the compensation payable to the individual employees or in the event that any employee has expired, to the legal heirs of the deceased employees subject to verification and proper identification by the learned advocate appearing on their behalf.

11 The Petition shall stand disposed of in these

terms.No order as to costs.

(Dr.)D.Y.Chandrachud,J.